

No. 12-2031 RI

This Commission convened a hearing on the complaint on April 25, 2013. The Longs represented themselves. Associate Counsel Maria A. Sanders represented the Director. The matter became ready for our decision on August 14, 2013, when the last written argument was filed.

Findings of Fact

1. The Longs lived and worked in Florida for the first part of 2009. While living in Florida, Dennis earned \$56,636.13.¹ Anna earned \$3,749.14. Florida does not impose an income tax.

2. Dennis moved to Missouri in June, and Anna followed in July. While living in Missouri, Dennis earned \$26,810.91 in wages. Anna earned \$0.

3. The Longs filed a 2009 Missouri income tax return, reporting:

Federal adjusted gross income	\$26,811.00
Personal exemption	\$ 4,200.00
Federal income tax deduction	\$ 1,862.00
Missouri standard or itemized deduction	\$11,400.00
Missouri taxable income	\$ 9,349.00
Missouri income tax	\$ 336.00
Payments and Credits	<u>\$ 846.00</u>
Overpayment	\$ 510.00

The Longs requested that their overpayment be applied to their 2010 estimated tax.

3. On June 16, 2010, the Director issued a notice of proposed changes adjusting the Longs' federal income tax deduction from \$1,862 to \$813. Despite the Longs' request that the Director apply their overpayment to the next tax year, the Director issued them a refund of \$447.

4. On March 4, 2011, the Director notified the Longs that the Department had received information from the Internal Revenue Service ("IRS") indicating that the federal adjusted gross income ("FAGI") reported on the Longs' 2009 Missouri return did not match the FAGI reported on the Longs' 2009 federal return. The Director requested that the Longs file an amended return or provide verification they were not required to file an amended return.

¹ Because Missouri calculates income tax liability, even for married couples filing jointly, on an individual basis, we must examine both Dennis and Anna Long's income and tax liability. Therefore, we refer to them by their first names to distinguish between them, intending no disrespect.

5. On June 24, 2011, the Director issued a notice of adjustment as follows:

FAGI	\$81,657.00
Total deductions	\$24,211.00
Missouri taxable income	\$57,446.00
Missouri income tax	\$ 3,222.00
Total payments and credits	\$ 846.00
Amount previously refunded	\$ 447.00
Interest	\$ 100.80
Penalty	<u>\$ 141.15</u>
Total Amount Due	\$ 3,064.95

6. By letter dated July 7, 2011, the Longs supplied information to the Director showing Missouri income of \$26,811, Florida income of \$60,835, and a moving expense deduction of \$5,539. They included copies of their 2009 W-2 forms.

7. On July 13, 2011, the Director issued another notice of adjustment to the Longs. The Director adjusted Dennis' income percentage to 33% and Anna's Missouri income percentage to 100%. This reduced the Longs' combined tax liability to \$1,063.00. After applying credit for withholding and accounting for the previous refund of \$447.00, the Director reported the tax due as \$664.00, plus interest. He abated the penalty, but imposed additions of 5%.

8. On September 28, 2011, the Director issued a notice of deficiency to the Longs, stating that they owed \$664 in tax, \$33.20 in additions to tax, and interest of \$26.36, for a total of \$723.56.

9. On November 9, 2011, the Longs timely protested the notice of deficiency on the basis that the calculation of their Missouri tax liability should not include their Florida income. They also made a payment of \$73.00.

10. On November 23, 2011, the Director issued another notice of adjustment, allocating \$77,908 of income to Dennis, for a Missouri income percentage of 34%, and \$3,749 to Anna, for a Missouri income percentage of 0%. This reduced the principal amount of tax due to \$638 and

the additions to \$31.90. The Director credited the Longs' payment of \$73.00 and adjusted the interest and additions.

11. The Director issued a final decision dated October 18, 2012, upholding the notice of deficiency. In the final decision, the Director stated the Longs owed \$627.00 in tax, \$19.07 in interest, and \$0 in additions. The Longs timely appealed the Director's final decision.

12. After the hearing held on April 25, 2013, the Longs made a payment of \$654.36. The payment satisfied the entire liability assessed by the Director for the 2009 tax year.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's findings, orders, decisions and assessments. Section 621.050.1.² The Longs have the burden to prove they are not liable for the amount that the Director assessed. Sections 621.050.2 and 143.661. Our duty in a tax case is not merely to review the Director's decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990). We may do whatever the law permits the Director to do, and we must do what the Director must do. *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., W.D. 1974).

The Longs do not dispute that they were Missouri residents for part of the year in 2009. Section 143.051 governs the Missouri tax liability of a part-year resident:

1. An individual who is a resident for only part of his taxable period shall be treated as a nonresident for purposes of sections 143.011 to 143.996. His Missouri nonresident adjusted gross income (Missouri adjusted gross income [MoAGI] from sources within this state) shall consist of:

²Statutory references are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

(1) All items that would have determined his Missouri adjusted gross income if he had a taxable period as a resident consisting solely of the time he was a resident, and

(2) All items that would have determined his Missouri nonresident adjusted gross income if he had a taxable period as a nonresident consisting solely of the time he was not a resident.

2. An individual described in subsection 1 may determine his tax as if he were a resident for the entire taxable period.

Under this statute, we may determine the Longs' tax as non-residents under subsection 1 or as residents under subsection 2. As we have done in the past, we determine which treatment is most beneficial to them and use that method. *See Smith v. Director of Revenue*, No. 04-1432 RI (Oct. 28, 2005); *Ingold v. Director of Revenue*, No. 05-0067 RI (April 3, 2006).

A. Tax as if a Missouri Resident

Section 143.121 provides that the MoAGI of a resident shall be his federal adjusted gross income, subject to certain modifications that are not applicable in this case. Missouri may tax the income of a resident regardless of the source from which the income is earned. *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 462-63, 115 S. Ct. 2214, 2222 (1995); *Lloyd v. Director of Revenue*, 851 S.W.2d 519, 522 (Mo. banc 1993).

Section 143.111 provides:

The Missouri taxable income of a resident shall be such resident's Missouri adjusted gross income less:

(1) Either the Missouri standard deduction or the Missouri itemized deduction;

(2) The Missouri deduction for personal exemptions;

(3) The Missouri deduction for dependency exemptions;

(4) The deduction for federal income taxes provided in section 143.171; and

(5) The deduction for a self-employed individual's health insurance costs provided in section 143.113.

The Director's November 23, 2011 notice of adjustment showed that Dennis' 2009 Missouri income tax, computed as a Missouri resident, would be \$3,049. Anna's would be \$56, for a total combined Missouri tax liability of \$3,105. Missouri allows a resident individual to take a credit against the tax otherwise due for the amount of any income tax imposed on him by another state. Section 143.081.1. Because Florida does not have an income tax, the Longs claim no credit for income tax paid to Florida.

B. Tax Computed as Non-residents

Section 143.041 determines the computation of a non-resident's Missouri income tax:

A tax is hereby imposed for every taxable year on the income of every nonresident individual which is derived from sources within this state. The tax shall be that amount which bears the same ratio to the tax applicable to the individual if he would have been a resident as (A) his Missouri nonresident adjusted gross income as determined under section 143.181 (Missouri adjusted gross income derived from sources within this state) bears to (B) his Missouri adjusted gross income derived from all sources.

This statute thus defines a non-resident's tax as equal to the following amount:

Tax as if a resident x (Nonresident MoAGI/All-source MoAGI)

A part-year resident's nonresident MoAGI consists of:

- (1) All items that would have determined his Missouri adjusted gross income if he had a taxable period as a resident consisting solely of the time he was a resident, and
- (2) All items that would have determined his Missouri nonresident adjusted gross income if he had a taxable period as a nonresident consisting solely of the time he was not a resident.

Section 143.051.1. If the Longs had a taxable period consisting solely of the time they were residents, their MoAGI would be \$26,811. Section 143.181. They had no Missouri-source

income during the time they were non-residents, thus no MoAGI under paragraph (2).

Therefore, Dennis' non-resident MoAGI is \$26,811, and Anna's is \$0.

We divide their non-resident MoAGI by their FAGI, then multiply by their Missouri tax liability as if full year residents. For Dennis, the calculation is:

$$26,811/77,908 = .34 \text{ (rounded)}. \quad \$3,049 \times .34 = \$1,037.$$

Because the numerator in Anna's ratio is zero, no further calculation is required. The resulting tax liability for the Longs – \$1,037 – is more favorable than treatment as a Missouri resident, so this is the amount we use. From this we subtract the \$846 withheld by Dennis' Missouri employer, to obtain an underpayment amount of \$191. The Director added additions in the amount of \$31.90 and interest at the statutory rate to this amount, then added \$447, the amount previously refunded to the Longs.

Additions to tax on account of deficiencies are authorized by § 143.751, which provides:

1. If any part of a deficiency is due to negligence or intentional disregard of rules and regulations (but without intent to defraud) there shall be added to the tax an amount equal to five percent of the deficiency. The director shall apprise the taxpayer of the factual basis for the finding of negligence, or the specific rules or regulations disregarded, at the time the director issues a proposed assessment. . . .

Negligence is “the failure to make a reasonable attempt to comply with the state tax laws.” *Hiatt v. Director of Revenue*, 899 S.W.2d 870, 872 (Mo. banc 1995). The Longs made a not unreasonable attempt to comply with state tax laws. Therefore, they are not liable for additions. The Director imposed additions of \$31.90. The Longs are due a refund of this amount. Interest is required, however, under § 143.731.

In their written argument, the Longs concede that the cases cited by the Director in his brief are controlling. They continue to object to using income earned while residents of another

state as a basis for any Missouri tax computation, however, on the basis that such a taxing scheme is inequitable.

In *Matteson v. Director of Revenue*, 909 S.W.2d 356, 358 (Mo. banc 1995), the Court rejected the taxpayers' assertion that the Missouri tax scheme unfairly discriminates against non-residents by including their non-Missouri source income in determining the rate at which their Missouri income is to be taxed. The Court cited *Maxwell v. Bugbee*, 40 S. Ct. 2, 6 (1919), which held:

When the state levies taxes within its authority, property not in itself taxable by the state may be used as a measure of the tax imposed.

Matteson further pointed out that the taxpayers in that case had an FAGI of over \$100,000 and so were not similarly situated to taxpayers with a total income of approximately \$33,000, the amount of the *Matteson*'s Missouri source income. The same is true for the Longs, whose 2009 FAGI was \$81,657. They are not similarly situated to taxpayers with an income of only \$26,811.

In addition, the courts of other states have upheld taxing schemes similar to Missouri's, and the United States Supreme Court has denied certiorari. *Stevens v. State Tax Assessor*, 571 A.2d 1195 (Me.), *cert. denied*, 498 U.S. 819 (1990); *Brady v. State*, 607 N.E.2d 1060 (N.Y. 1992), *cert. denied*, 509 U.S. 905 (1993). The disparity in this case arises because Florida has no income tax, as opposed to Missouri.

The statutes imposing Missouri's income tax are enacted by the Missouri legislature, and this Commission does not have the authority to alter the provisions of the statutes. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). We must apply them as written. This Commission has no power to go beyond the statutes and apply principles of equity. *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 668-69 (Mo. 1950).

Summary

The Director correctly determined the amount of the Longs' 2009 Missouri income tax liability, but the Longs are not liable for additions on that amount. They are entitled to a refund of \$31.90.

SO ORDERED on August 23, 2013.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner